

EXHIBIT 28

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In accordance with a protective order, the enclosure(s) shall be treated as confidential and shall not be shown to any person other than those persons designated in paragraph 8.2 of the paragraph order.

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*** CONFIDENTIAL ***

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

Civil Action No. 1:22-cv-00125-SWS

DEPOSITION OF ZEV SHIMKO
November 30, 2023

CUSTODIA BANK, INC.,

Plaintiff,

vs.

FEDERAL RESERVE BOARD OF GOVERNORS and FEDERAL
RESERVE BANK OF KANSAS CITY,

Defendants.

APPEARANCES:

WILLIAMS & CONNOLLY, LLP

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Appearing on behalf of
Custodia Bank, Inc.

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Appearing on behalf of
Federal Reserve Bank of Kansas City

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1 Q Oh, no. I'm sorry. The actual email
2 itself.

3 A Oh. I believe that was in February
4 of 2021.

5 Q And what was the context of the email?

6 A Katie was referencing talking points,
7 presumably as part of a potential investor
8 communication.

9 Q What did the talking points say?

10 A Generally, that Katie felt that we had a
11 strong business model; that she felt we would be
12 getting a master accounts, I think are the two main
13 topics that come to mind.

14 Q Okay. Besides Ms. Long and besides
15 counsel, did you speak to anybody else in preparation
16 for your deposition today?

17 A I did not.

18 Q Okay. I'm going to pivot to kind of your
19 background.

20 (Mr. Michaelson entered the conference
21 room.)

22 MR. LAX: I'll state for the record that
23 Andrew Michaelson from King & Spalding has joined.

24 Q (BY MR. LAX) Do you live in Denver?

25 A I do.

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1 Q Are you from Denver?
2 A No.
3 Q Where are you from?
4 A I am from New York.
5 Q Okay. Did you attend high school in New
6 York?
7 A I did.
8 Q Get a degree?
9 A A high school diploma?
10 Q Uh-huh.
11 A Yes.
12 Q After high school, did you go to college?
13 A I did.
14 Q Where did you go to college?
15 A I went to Northeastern University in
16 Boston.
17 Q What did you study?
18 A I studied business and insurance and also
19 related courses like economics.
20 Q Did you get a degree from Northeastern?
21 A I did get a bachelor's, yes.
22 Q When was that?
23 A That was in May of 2014.
24 Q May of 2014. Okay.
25 After graduating from Northeastern, what

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1 did you do next?

2 A I went to work at Morgan Stanley, where
3 I'd interned the year prior.

4 Q And when you went to work at Morgan
5 Stanley full-time, what was your position?

6 A My position was -- I believe the title was
7 an analyst -- I don't recall a more specific title --
8 within the fixed income division.

9 Q How long were you in that role?

10 A I was in that specific role for about two
11 years.

12 Q Okay. So until sometime in 2016?

13 A I think that's fair, yes.

14 Q What did you do after that role?

15 A I transitioned internally for a short
16 period of time to the equity capital market side of
17 the house.

18 Q And what was your role in that side of the
19 house?

20 A Similar role from the perspective of
21 helping companies raise capital. In this role, it
22 was around equity. In the previous role, it was
23 around debt.

24 Q While you were at Morgan Stanley, did you
25 meet Caitlin Long?

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1 A I had first learned about digital
2 assets -- such as Bitcoin -- while I was at Morgan
3 Stanley. I was spending a lot of personal time
4 researching the technology. I was spending a lot of
5 nights and weekends and just felt that in order for
6 me to truly advance my knowledge, I had to actively,
7 you know, work at a company in the industry.

8 Q Okay. So what did you do after Prosper?

9 A I went to a company here in Denver called
10 SALT Lending.

11 Q What is SALT Lending?

12 A SALT Lending was the first company to lend
13 dollars against digital assets like Bitcoin;
14 essentially, Bitcoin-collateralized loans.

15 Q Is SALT Lending the same as SALT
16 blockchain?

17 A I know there were a couple of entities,
18 and there may have been a name change. So affiliated
19 at least. I don't know if the SALT Lending name is
20 still active.

21 Q Okay. What was your role at SALT Lending?

22 A I was the head of capital markets and
23 corporate development. I spent a lot of time with
24 potential investors and generally represented the
25 business with external parties.

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1 Q Okay. How long were you there?

2 A I was at SALT roughly for about two years
3 as well.

4 Q Okay. What did you do next?

5 A I moved back to California for my
6 now-wife. I went to go work for a company called
7 Figure Technologies.

8 Q And just so I'm clear on the chronology,
9 when about is this move back to California?

10 A This would have been roughly September
11 of 2019.

12 Q Okay. What is Figure Technologies?

13 A Figure Technologies is a financial
14 technology company that uses blockchain technology to
15 improve the process for underwriting and issuing and
16 trading a variety of financial assets.

17 Q Okay. And what was your role there?

18 A I was leading business development for the
19 Provenance Blockchain, which was the inhouse-built
20 blockchain, to support the, again, issuance and
21 trading of these financial assets.

22 Q And how long were you at Figure?

23 A I was at Figure for about six months.

24 Q Okay. What did you do next?

25 A I decided to join Caitlin at Custodia in

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1 early 2020.

2 Q Before discussing your joining Custodia,
3 for these other entities that you have described
4 working for post college to Custodia, are any of
5 those entities depository institutions as you
6 understand the term?

7 A They themselves are not depository
8 institutions, no.

9 Q Are any of those entities federally
10 insured, as far as you know?

11 A Not directly, no.

12 Q So you joined Custodia, you said, in 2020?

13 A It was April of 2020.

14 Q Is that right? Okay.

15 How did you come to join Custodia?

16 A I got a -- I can't remember if it was an
17 email or a call from Caitlin. She told me what she
18 was working on. She explained the business model to
19 me. And it resonated quite meaningfully with my
20 experience and my interests. And decided it was the
21 right time to embark on a new opportunity and join
22 Custodia.

23 Q Okay. And just for the record, I know
24 Custodia used to be called Avanti. It's now called
25 Custodia. So when I'm asking questions about

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1 Custodia, it applies to both Avanti and Custodia.

2 Is that fair?

3 A That's fair.

4 Q Okay. You said Ms. Long told ~~you~~ about
5 the business model in that initial call?

6 A Yes. High level about the business model,
7 about the SPDI framework and, again, generally what,
8 you know, she was looking to achieve with this new
9 endeavor.

10 Q Okay. So let's break those down.

11 What did she tell ~~you~~ about the business
12 model?

13 A That, first and foremost, this entity --
14 Custodia, Avanti at the time -- was looking to become
15 a bank. Becoming a bank was important for a variety
16 of reasons. We talked about, I recall, the full
17 reserve nature of Custodia.

18 Generally, we also discussed how one can
19 operate a safe institution with respect to digital
20 assets. And there was a lot of alignment in the way
21 that Caitlin -- Caitlin and I thought about digital
22 assets and how it would safely integrate with the
23 banking system.

24 Q What do you mean by "full reserve nature
25 of Custodia"?

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1 A I don't recall specifically. I imagine,
2 you know, I likely had follow-up questions we might
3 have talked about, but it would have been similar in
4 nature to the topics discussed.

5 Q Did you discuss Custodia with anyone else
6 besides Ms. Long at this time?

7 A Not in detail, no.

8 Q Okay. When you joined Custodia, what was
9 your role?

10 A My role was that of chief operating
11 officer.

12 Q Okay. And how long -- do you hold that
13 role today?

14 A That is one of my titles today, yes.

15 Q Do you hold another title?

16 A I do.

17 Q What is that title?

18 A That is president.

19 Q Can you tell me about your
20 responsibilities as chief operating officer.

21 A Sure. Primarily, it involves day-to-day
22 responsibilities. I have oversight for operations of
23 the bank, for product, for business development and
24 related functions.

25 Q And then what about your role as its

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1 president?

2 A The role of president, additionally, has
3 given me authority to ensure alignment amongst the
4 executive team and to take, you know, more of a
5 leadership role internally and externally as well.

6 Q Did anyone predate you in the role of
7 president?

8 A No. That was not a taken role. That was
9 vacant.

10 Q When did you assume that role?

11 A I think that was the middle of 2022.

12 Q As COO and president, is it fair to say
13 that, colloquially, you're the Number 2 person in the
14 company?

15 A I think that's generally fair, yes.

16 Q Generally fair.

17 If not you, who else would be the Number 2
18 person at the company?

19 A So we have a few executives at the
20 company. So that would be my answer.

21 Q Who are those executives?

22 A Our general counsel, Tanya McCorquodale;
23 our chief compliance officer, Bill Neurohr; our chief
24 financial officer, Mike Borges.

25 Q Do you own an equity stake in Custodia?

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1 A Yes.

2 Q About what percentage?

3 A The equity stake I own is less than
4 1 percent.

5 Q And do you have any voting shares in
6 Custodia?

7 A I do not.

8 Q Okay. Do you do the majority of your
9 Custodia work from here in Denver?

10 A I do.

11 Q Do you spend any time in Wyoming for
12 Custodia work?

13 A I do.

14 Q About how much of the year?

15 A Roughly, maybe a couple days a month, on
16 average.

17 Q Do you go there for meetings?

18 A Could be a meeting. Could be a regulatory
19 exam. Could be something else related to operations.

20 Q Does Custodia have a board of directors?

21 A Yes.

22 Q Who sits on that board?

23 A Caitlin is the only employee director.

24 And then we have a handful of external directors.

25 Q Do you know who they are?

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1 Q Without disclosing any privileged
2 information, what was the substance of those
3 conversations with Ms. Long?

4 A Once -- and I don't recall a specific
5 timeline. But once we understood the tiering system,
6 it was clear that membership would put ~~Custodia~~ in
7 that Tier 2 bucket as opposed to that Tier 3 bucket.

8 Q Besides the fact of being a member or not
9 being a member, do you understand there to be any
10 other differences between Tier 2 and Tier 3 under the
11 account access guidelines?

12 A I don't recall or know all of the
13 differences. I would say that the primary
14 distinction between the tier, from my understanding,
15 is Federal oversight.

16 Q Is there a distinction in your -- was
17 there a distinction, in your understanding, between
18 how a reserve bank reviews a master account request
19 from a Tier 2 entity versus a Tier 3 entity?

20 A My understanding is that there was a
21 difference and there were generally more hurdles for
22 a Tier 3, but I do not recall the specifics.

23 Q What kind of hurdles?

24 A Again, I don't recall the specifics.

25 Q Is it your understanding that Tier 3

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1 institutions are subjected to some level of scrutiny
2 in their master account request process?

3 A That is my general understanding, yes.

4 Q Is it your understanding that Tier 2
5 entities are subject to some level of scrutiny in
6 their master account process?

7 A That is my understanding, yes.

8 Q Would it be your testimony that Custodia
9 was subject to scrutiny in its master account request
10 process?

11 A What point of time are we referencing with
12 that question?

13 Q Let's say from the beginning.

14 A Do you mind just repeating the question.

15 Q Sure.

16 Would it be your testimony that Custodia
17 was subjected to scrutiny in its master account
18 process?

19 A Yes.

20 Q Can you describe the scrutiny that the
21 Reserve Bank of Kansas City applied to its review of
22 Custodia's master account process?

23 A Generally, I would say that Custodia was,
24 over a long period of time, asked many questions
25 about its business models, many questions about

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1 digital assets. Custodia was asked many repetitive
2 questions, and it felt that there was this indefinite
3 delay in a decision.

4 Q When did those questions begin from
5 Federal Reserve Bank of Kansas City?

6 A I don't recall specific timing, but I
7 would say, you know, early on, I think we looked at a
8 document from before the application itself.

9 Q And did those questions continue from
10 early on throughout the entire process?

11 A There was a period of time where there
12 was, effectively, silence and we did not have
13 communication with the Kansas City Fed. But before
14 and after that period, there were many questions.

15 Q So can you describe to me how the
16 introduction of the account access guidelines changed
17 the level of scrutiny that the Reserve Bank of Kansas
18 City applied to Custodia's master account request?

19 A I can't say specifically how the access
20 guidelines changed the view of our master account
21 application. I don't know the Kansas City Fed
22 process with respect to when an applicant provided
23 the completed application for a master account.

24 Q Okay. Picking back up in Exhibit 249,
25 Ms. Long continues -- and we're moving to the one,

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1 two, three, four -- the fifth paragraph that starts
2 with: We do not think.

3 Do you see that?

4 A Yes.

5 Q And I want to start with the sentence that
6 says Meanwhile in that paragraph.

7 Do you see that?

8 A Yes.

9 Q Ms. Long writes: Meanwhile, both Katie
10 Cox and Cleary are now focusing their attention on
11 the board in DC to figure out who will really be
12 making the decision and advise us on next steps.

13 Did I read that right?

14 A Yes.

15 Q Did Custodia instruct Ms. Cox and Cleary
16 to focus their attention on the board?

17 A I can't say that definitively. I don't
18 know.

19 Q Is that something that Ms. Cox did of her
20 own volition?

21 MS. WEINBERGER: Object to form.

22 A I'm aware that there were conversations
23 between Katie and members of the board. I don't know
24 if that was at her own volition or not.

25 Q And then what about Cleary?

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

CUSTODIA BANK, INC.,)
)
Plaintiff,)
)
v.)
)
FEDERAL RESERVE BOARD OF)
GOVERNORS and FEDERAL RESERVE)
BANK OF KANSAS CITY,)
)
Defendants.)

**ERRATA SHEET FOR THE TRANSCRIPT OF THE DEPOSITION OF
ZEV SHIMKO**

I, Zev Shimko, have read the transcript of my deposition taken on November 30, 2023 in the above captioned matter and make the following corrections:

Page	Line	Current Transcript	Change	Reason
12	12	accounts	account	Transcription error
16	19	Prospect	Prosper	Transcription error
19	20	decided	I decided	Transcription error
21	2	accounts	account	Transcription error
21	3	accounts	account	Transcription error
29	17	enterprise risk committee	enterprise risk management committee	Transcription error
34	22	a full reserve	fully reserved	Transcription error
39	16	accounts	account	Transcription error
40	10	algorhythmic	algorithmic	Transcription error
49	24	jibe	jive	Transcription error

Page	Line	Current Transcript	Change	Reason
55	22	accounts	account	Transcription error
56	15	accounts	account	Transcription error
60	6	guaranty	guarantee	Transcription error
60	10	or a KC	or the KC	Transcription error
61	1	take	I take	Transcription error
63	9	with Wyoming	Wyoming	Transcription error
65	8	anyone art Visa	anyone at Visa	Transcription error
71	21	accounts	account	Transcription error
72	2	accounts	account	Transcription error
72	15	accounts	account	Transcription error
73	8	accounts	account	Transcription error
74	11	not on Caitlin's side	not in Caitlin's mind	Transcription error
76	20	accounts	account	Transcription error
76	23	accounts	account	Transcription error
77	12	Again, one	Again, as in one	Transcription error
78	17	corresponding	correspondent	Transcription error
78	19	maintain	obtain	Transcription error
81	17	accounts	account	Transcription error
84	19	accounts	account	Transcription error
88	14	overlapping	overlap	Transcription error
102	11	when	what	Transcription error
107	22	affected	effected	Transcription error

Page	Line	Current Transcript	Change	Reason
110	22	corresponding	correspondent	Transcription error
114	17	the account access	the proposed payment system	Transcription error
128	4	I do not know	I did not. No	Transcription error
140	25	models	model	Transcription error
156	3	accounts	account	Transcription error
165	19	accounts	account	Transcription error
167	4	presence	present	Transcription error
169	25	accounts	account	Transcription error
176	20	accounts	account	Transcription error
194	13	done	done by	Transcription error
199	22	Federal	Federal Reserve	Transcription error
211	17	patents	patent	Transcription error
220	18	the program and	the program is with	Transcription error
228	25	operated	operating	Transcription error
230	1	Godshall	Gotschall	Transcription error
230	2	Godshall	Gotschall	Transcription error
230	5	Godshall	Gotschall	Transcription error
233	21	that's	that	Transcription error

Dated: January 5, 2024

/s/ Zev Shimko
Zev Shimko